

August 9, 2012

VIA EMAIL

The Honorable Denise L. Cote
United States District Judge
Southern District of New York
500 Pearl Street, Room 1610
New York, NY 10007-131

Re: *FHFA Actions No. 11 Civ. 05201 (DLC) et al.*

Dear Judge Cote:

Per DLC Chambers, docket in:	
11-cv-5201	11-cv-6188
11-cv-6189	11-cv-6190
11-cv-6192	11-cv-6193
11-cv-6195	11-cv-6196
11-cv-6198	11-cv-6200
11-cv-6201	11-cv-6202
11-cv-6203	11-cv-6739
11-cv-7010	11-cv-7048

We write on behalf of the Federal Housing Finance Agency (“FHFA”) in response to the Court’s direction that the parties provide a status update and proposed orders to facilitate the third party production of loan files and suggest ways of moving loan file production forward in the upcoming weeks.

Status of Loan File Collection

As agreed during the conference on July 31, 2012, FHFA furnished Defendants with a list of approximately 106,000 loan files in its possession that relate to the Securitizations at issue in these cases, reflecting both supporting and non-supporting loan groups.¹ Among other information, FHFA identified these files by loan number, and identified the entities from which those files were obtained.

As the Court is aware, Defendants represented during the July 31, 2012 conference that they would provide the same information to FHFA, in advance of today’s date, so that the parties could jointly identify those loan files to be obtained from third parties. (Tr. at 121 (“MS. SHANE: ... I would suggest a couple of interim steps to make it more productive, including that the parties [ex]change information about what loan files they have and therefore what loan files they need. (Tr. at 121; *see also id.* at 123-24.)

Defendants advised FHFA during a call yesterday that, despite the above representations by counsel for JPMorgan Chase, they had not yet begun to assemble lists of the loan files currently in their possession. In response, counsel for FHFA read aloud the relevant transcript portions. Last night and today, following the meet and confer, most Defendants produced some form of loan file list to FHFA. Bank of America agreed to produce a list but, as of yet, has not

¹ FHFA obtained the loan files on its list from third parties via administrative subpoenas and the exercise of contractual rights. The information on FHFA’s list is based on the data and information provided to FHFA by those third parties. Subpoenaed parties also produced loan files that do not relate, or practicably cannot be identified as relating, to the Securitizations at issue.

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done so. Ally, Barclays, and GMAC reported that they have no loan files in their possession. UBS reported that it has already produced all loan files in its possession. General Electric did not participate in the meet and confer and has not provided any report at all.

Effectively, despite having been served by FHFA with requests to produce loan files months ago, most Defendants disclosed for the first time yesterday and today that of the million or more loan files at issue in the case, they have only a small portion in their possession.

During the meet and confer, Defendants also asserted that FHFA has refused to participate in a process to obtain these files from third parties. In fact, Defendants issued the vast majority of their Rule 45 subpoenas after the last Court conference, without first informing FHFA of which loan files were in their own possession, and without seeking FHFA's participation.

Entities Possessing Loan Files

FHFA has identified for Defendants the entities that produced to FHFA the loan files on the loan list it provided; FHFA further reported that it is planning to complete production of those files before the end of this month. FHFA obtained the files pursuant to administrative subpoenas and through the exercise of contractual rights by the GSEs; it intends to issue Rule 45 subpoenas to the same entities, asking that those entities formally agree that the loan files they previously produced be deemed produced in this litigation, subject to the Protective Order in this litigation. FHFA will also issue Rule 45 subpoenas to the entities identified by Defendants, or a subset thereof, requesting materials relevant to the litigation and in the entities' possession but not requested by Defendants.

Defendants have provided FHFA with a list of the entities upon whom they have served subpoenas directing the production of loan files and originator guidelines. Defendants have advised FHFA that these outstanding subpoenas encompass most of the outstanding loan files, and that they plan to serve additional subpoenas to cover any remainder. Defendants have refused, however, to identify the specific entities that they have yet to subpoena and that are in possession of outstanding files, or the specific number or percentage of loan files not covered by those subpoenas that have thus far been served.

Proposed Orders and Process for Moving Forward in Advance of the August 30 Conference

The Court directed that the parties submit proposed orders pursuant to which the Court could direct third party subpoena recipients, to the extent it has jurisdiction over those entities, to promptly complete production of all outstanding files and to participate in the conference scheduled for August 30, 2012, at which the status of such production will be addressed. (Tr. at 123 ("THE COURT: I would like by August 9th a proposed order or two and status letter so that I can review them and give my input and, if necessary or appropriate, sign them by August 10th and get a system set up for my absence for a period of time the following week where more proposed orders of a similar nature and status reports might come in. Is that doable, Ms. Shane? MS. SHANE: Yes, your Honor.").)

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FHFA attaches a proposed Order, in which the Court directs those third parties identified by Defendants as residing within this jurisdiction to attend the upcoming conference on August 30, 2012, to address any failure to complete loan file production by that time. It also requests, without ordering, that those third parties identified by Defendants as residing outside this jurisdiction participate by telephone to likewise advise the Court as to the status of their production.

FHFA also respectfully requests that this Court enter an Order (1) setting August 13, 2012 as the date by which all Defendants must produce lists of the loans in their possession, custody, or control, to the extent they have not done so; and (2) setting August 23, 2012 as a date by which Defendants should provide a report, on a case by case and securitization by securitization basis, specifying the number of loans that they have received pursuant to their subpoenas, on which dates, and from whom.

After advising FHFA yesterday that they would not submit a proposed order, Defendants presented FHFA with such an order this afternoon. Defendants' proposed order should be rejected insofar as it requires the parties to engage in meet-and-confers regarding loan file production, because Defendants' Rule 45 subpoenas (or according to Defendants, most of them) have already been served. In this instance, the more efficient way forward is instead to direct the Defendants and the subpoenaed third-parties to report on the actual progress of loan file production. If Defendants need to seek judicial assistance in enforcing their subpoenas, they can do so. Meet and confers are not productive in every circumstance, and the burden of the accumulation of meetings falls disproportionately on FHFA's counsel.

There is also no need to direct, as Defendants propose, that FHFA provide lists of loan files requested via administrative subpoenas or contractual rights regardless of whether FHFA has received those files or not. FHFA's requests were not served in connection with these cases, were served long before this litigation began, and seek a large amount of information unrelated to this litigation. Indeed, many of the parties of whom FHFA made these requests refused to provide any loan files in response—including several Defendants and their affiliates.² There is no need for an accounting of the loan files that FHFA requested from Defendants and other entities over two years ago; the relevant question is what files the parties have in their possession now and what files will have be produced by third parties. As Defendants did not ask FHFA for this irrelevant information until yesterday, FHFA will respond to Defendants' request by August 14, 2012.

Finally, FHFA should not be subject to an order directing it to produce a list of its loan files, as FHFA has already provided such a list to Defendants.

² Among the entities that have not produced loan files in responses to the administrative subpoenas issued by FHFA are several Defendants in these actions and their affiliates, including Citibank, JPMorgan, and Bank of America.

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Very truly yours,

/s/ Philippe Z. Selendy

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 Agency in FHFA v. UBS Americas, Inc., FHFA v.
 JPMorgan Chase & Co., FHFA v. Deutsche
 Bank AG, FHFA v. Citigroup Inc., and FHFA v.
 Goldman, Sachs & Co.*

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 Agency in FHFA v. First Horizon National
 Corp., FHFA v. Bank of America Corp., and
 FHFA v. Credit Suisse Holdings (USA), Inc.*

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 and FHFA v. Nomura Holding America, Inc.*

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 JPMorgan Chase & Co., FHFA v. Barclays Bank
 PLC, FHFA v. Citigroup Inc., and FHFA v.
 Merrill Lynch & Co., Inc.*

/s/ Kanchana Wangkeo Leung

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 Agency in FHFA v. Ally Financial Inc., FHFA v.
 General Electric Company., FHFA v. Morgan
 Stanley, and FHFA v. SG Americas, Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 5201 (DLC)
Plaintiff,	:	
v.	:	
UBS AMERICAS, INC., et al.,	:	
Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6188 (DLC)
Plaintiff,	:	
v.	:	
JPMORGAN CHASE & CO., et al.,	:	
Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6189 (DLC)
Plaintiff,	:	
v.	:	
HSBC NORTH AMERICA HOLDINGS, INC., et	:	
al.,	:	
Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6190 (DLC)
Plaintiff,	:	
v.	:	
BARCLAYS BANK PLC, et al.,	:	
Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6192 (DLC)
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v. :
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DEUTSCHE BANK AG, et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6193 (DLC)
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v. :
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FIRST HORIZON NATIONAL CORP., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6195 (DLC)
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v. :
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BANK OF AMERICA CORP., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6196 (DLC)
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v. :
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CITIGROUP INC., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6198 (DLC)
Plaintiff,	:	
v.	:	
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GOLDMAN, SACHS & CO., et al.,	:	
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Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6200 (DLC)
Plaintiff,	:	
v.	:	
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CREDIT SUISSE HOLDINGS (USA), INC., et al.,	:	
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Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6201 (DLC)
Plaintiff,	:	
v.	:	
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NOMURA HOLDING AMERICA, INC., et al.,	:	
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Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6202(DLC)
Plaintiff,	:	
v.	:	
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MERRILL LYNCH & CO., INC., et al.,	:	
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Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6203 (DLC)
Plaintiff,	:	
v.	:	
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SG AMERICAS, INC., et al.,	:	
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Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6739 (DLC)
Plaintiff,	:	
v.	:	
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MORGAN STANLEY, et al.,	:	
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Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 7010 (DLC)
Plaintiff,	:	
v.	:	
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ALLY FINANCIAL INC., et al.,	:	
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Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 7048 (DLC)
Plaintiff,	:	
v.	:	
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GENERAL ELECTRIC COMPANY, et al.,	:	
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Defendants.	:	
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[PROPOSED] ORDER

WHEREAS the Court is jointly managing discovery in the above-captioned cases;

WHEREAS all parties in these cases have a substantial need to receive complete production of loan files relating to the securitizations at issue in these cases;

WHEREAS the Court has ordered that discovery be substantially completed in these cases by September 30, 2012;

WHEREAS, the parties have notified the Court that Defendants have served upon the entities listed below subpoenas duces tecum, pursuant to Rule of Civil Procedure 45, directing them to produce loan files relevant to these cases before September 30, 2012. It is hereby

ORDERED that each of the following entities, which are the subject of subpoenas issued by the Southern District of New York, either will appear in person or by telephone at a conference at _____ on August 30, 2012 or will notify the Court by that date that it has fully complied with the subpoenas served upon it in these cases:

American Home Mortgage Investment Corp.

Amerimortgage, LLC

Ameriquest Mortgage Co.

Atlantic Pacific Mortgage Corp.

Bank of New York Trust

BNY Mellon

CIT Group

CitiMortgage Inc.

Countrywide Home Loans Inc.

EverBank Commercial Finance Inc.

Fifth Third Mortgage Co.

First Home Mortgage

FMF Capital LLC

Greenpoint Mortgage Funding Inc.

Homecomings Financial Network Inc.

HSBC Bank USA, N.A.

JPMorgan Chase Bank, N.A.

JPMorgan Chase Bank, N.A.

JPMorgan Trust Co.

LaSalle Bank
c/o Bank of America Corp.

Liberty Financial

Metropolitan National Bank Mortgage Co., LLC

Nationstar Mortgage LLC

Option One Mortgage Corp.

Option One Mortgage Corp.
n/k/a Sand Canyon Corp.

PHH Mortgage Corporation

U.S. Bank / U.S. Bancorp

Wachovia Mortgage Corp.
n/k/a Wells Fargo Bank

Washingotn Mutual
c/o J.P. Morgan Chase & Co.

Wells Fargo Bank, N.A.

Wilmington Finance, Inc.,

IT IS FURTHER REQUESTED that each of the following entities, which are the subject of subpoenas issued by courts other than the Southern District of New York, either will appear in person or by telephone at a conference at _____ on August 30, 2012 or will notify the Court by that date that it has fully complied with the subpoenas served upon it in these cases:

Aames Capital Corp.

Accredited Home Lenders, Inc.

Acoustic Home Loans, LLC

ACT Lending Corp.

Aegis Mortgage Corp.

AHM SV

Alliance Bancorp

Alliance Mortgage

Allstate Home Loans

American Home Mortgage

American Lending Group

American Mortgage Express

American Mortgage Network

Americorp Credit Corp.

Ameritrust Mortgage Co. LLC

Argent Mortgage Co., LLC
n/k/a CitiMortgage

Aurora Bank FSB

Bank of America, N.A.

Bank of America, N.A.

Bankers West

Bayrock Mortgage Corp.

BM Real Estate Services., Inc.

BNY Mellon

Bridgefield Mortgage Corporation
f/k/a ResMAE Mortgage Corporation"

BSM Financial

Cameron Financial

Capital One, N.A.

Carrington Mortgage Services, LLC

Carrington Mortgage Services, LLC

Cendant Mortgage Corp.,
n/k/a PHH Mortgage Corp.

Cenlar FSB

Centennial Mortgage

Chase Home Finance

Chevy Chase Bank, FSB
n/k/a Capital One Bank
c/o Capital One, N.A.

Christopher E. Hobson, Inc.
n/k/a Greenberry Financial Services, Inc.

Colorado Federal Savings Bank

ComUnity Lending, Inc.

Concord Mortgage

Cornerstone Mortgage

Countrywide Home Loans, Inc.

Credit Northeast

Credit Northeast Inc.

Crescent Mortgage Co.

CTX Mortgage Co

CUNA Mutual Mortgage Corp.
c/o PHH Mortgage

DAS Acquisition Co.

Deutsche Bank National Trust Co.

DHI

Downey Savings and Loan Association
c/o US Bank

Equifirst

Fairmont

Fidelity & Trust Mortgage

First Banc Mortgage

First Financial Equities, Inc.

First Horizon

First Meridian Mortgage

First NLC Financial Services, LLC

First Street Financial, Inc.

Flick Mortgage

Franklin Bank SSB c/o Prosperity Bank

Fremont Investment & Loan

Gateway Banc

Global Home Loans

GMAC

GMAC Mortgage LLC

GMAC Mortgage, LLC

Greenlight Financial Services, Inc.

Greenpoint Mortgage Funding, Inc.

Guaranteed Mortgage

Hamilton Mortgage

Harbourtown Mortgage

Home American Mortgage

Home Loan Center

Home Loan Center, Inc.

Home Loan Corp.

Home Loan Services, Inc.

f/k/a National City Home Loan Services, Inc.

Homebridge Mortgage Bankers Corp.

Homeward Residential, Inc.

f/k/a American Home Mortgage Servicing Inc.

HSBC Bank U.S.A., N.A.

Impac Funding

Impac Funding Corp.

IndyMac

Irwin Mortgage

Just Mortgage

Lenders Direct

Lenders Direct Capital Corp.

Loan Center

Lownhome Financial Holdings, LLC

Mandalay Mortgage LLC

Maribella

Market Street

Maverick Mortgage

Mega Capital Funding, Inc.

Merrill Lynch

Mid-Atlantic Financial Services, Inc.

Midland Mortgage

Midland Mortgage

MILA

Millenium Bank

Mortgage Network

Mortgage Access Corp.
c/o Corporation Service Co.

Mortgage Capital Associates

Mortgage Lenders Network USA, Inc.

Mutual of Omaha Insurance Co.

National City Mortgage

Nations Home Loan Lending Center

Nationstar Mortgage LLC

Nationstar Mortgage LLC

Navy Federal Credit Union

Network Funding

New Century

New Freedom Mortgage Corp.

New York Mortgage Corp

Nexstar Financial Corporation

Novastar Mortgage

Novastar Mortgage, Inc.

Ocwen Loan Servicing, LLC

Olympia West Mortgage Group

One West Bank

Opteum

Orchid Island TRS LLC
f/k/a Opteum Financial Services, LLC
c/o Corporation Service Co.

Ownit Mortgage Solutions, Inc.

Pacific Community Mortgage

Paul Financial

People's Choice

People's Choice Home Loans, Inc.

PHH Mortgage Corporation

Pinnacle Financial

Pinnacle Financial Corporation

Platinum Mortgage

Plaza Home Mortgage

Plaza Mortgage

PMC Bancorp

PMC Bancorp.

PNC Bank, N.A.

Point Bank

PrimeLending

Provident Funding Associates, LP

Provident Funds Associates LLP

Quicken Loans

Quicken Loans, Inc.

Realty Mortgage

Reliant Mortgage

Residential Funding Company, LLC

Residential Funding Corp.

Residential Mortgage Capital

ResMae

Saxon Mortgage Services, Inc.

Saxon Mortgage Services, Inc.

SCME Mortgage Bankers

Sea Breeze Financial

Sea Breeze Financial Services, Inc.

Sebring Capital Partners

Secured Bankers Mortgage

Select Portfolio Servicing, Inc.

Sierra Pacific Mortgage Co., Inc.

Silver State

Southstar Funding, LLC

Sterling Mortgage

Stonecreek Funding

SunTrust Mortgage, Inc.

Suntrust Mortgage, Inc.

Taylor Bean & Whitaker

Trustees & Custodians

U.S. Bank, N.A.

Unimortgage

United Pacific Mortgage Co., Inc.

Valley Vista Mortgage

Virtual Bank

Weichert

Wells Fargo

Wells Fargo Bank

Wells Fargo Bank, N.A.

Wells Fargo Bank, N.A.

Willow Bend Mortgage

Winstar Mortgage

WMC Mortgage

WR Starkey Mortgage

IT IS FURTHER ORDERED that Defendants shall be responsible for serving this Order upon all of the entities listed above.

SO ORDERED:

Dated: August __, 2012
New York, New York

DENISE L. COTE
United States District Judge